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January 9, 2015

Via Certified U.S. Mail and Email

Freedom of Information Officer
U.S. EPA, Region 10
Office of External Affairs
1200 6th Ave., Suite 900 (CEC-142)
Seattle, WA 98101
rl0foia@epa.gov

National Freedom of Information Officer
Records, FOIA, and Privacy Branch
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, DC 20460
hq.foia@epa.gov

Re: Freedom of Information Act Request

Dear Sir or Madam:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and implementing regulations of the U.S. Environmental Protection Agency ("EPA" or "the Agency"), 40 C.F.R. Part 2, the Pebble Limited Partnership ("PLP"), by and through its counsel, Steptoe & Johnson LLP, hereby requests the release of the following documents:

1. All documents relating to or referencing a mining project in southwest Alaska sometimes called the Pebble project, the PLP mine project, or the Pebble Mine (the "Project"), or relating to or referencing any of the Project's associated features or any parties interested in developing the Project (Pebble Limited Partnership, Northern Dynasty Minerals Ltd., etc.).
2. All documents relating to or referencing the draft or final versions of EPA's document entitled "An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska", and all documents relating to or referencing activities contributing in any way to that Assessment (collectively, the

- “Assessment”), including without limitation documents (a) regarding all peer-review processes associated with the Assessment, or (b) addressing reductions in the scope of the Assessment (for instance, limitations on the portions of the Bristol Bay watershed to be analyzed, or limitations on the environmental stressors to be considered).
3. All documents relating to or referencing the proposed or actual invocation of the regulatory process under Section 404(c) of the Clean Water Act, 13 U.S.C. § 1344(c) (“Section 404(c)”), with respect to Bristol Bay, the Bristol Bay watershed (including without limitation the Nushagak and Mulchatna watersheds), or the Project.
 4. All documents relating to or referencing EPA’s authority to invoke Section 404(c) prior to the submission of a Section 404 permit application to the US Army Corps of Engineers (“USACE”), or prior to the USACE’s review of a Section 404 permit application. This request includes any documents relating to or referencing any potential policy, legal, or political advantages or disadvantages to EPA taking any action under Section 404(c) prior to the submission of a Section 404 permit application to the USACE.
 5. All documents relating to or referencing (a) any Inspector General’s investigation relating to the Project, the Assessment, the invocation of Section 404(c) as applied to the Project, or EPA’s authority to invoke Section 404(c) in connection with the Project, (b) Phil North’s efforts to avoid any inquiry or subpoena issued in connection with any investigation of the foregoing issues (including without limitation any Congressional investigation), and (c) the search for any emails relating to the foregoing issues that were sent to or from Mr. North’s official, secondary, or personal email addresses, but which are now missing or unavailable.

These requests include, without limitation, all electronic mail messages and other written communications, between and among the persons listed on Attachment A to this letter that relate in any way to the Project. To assist EPA, Attachment A identifies the individuals who are or have been EPA employees and are known to have had some involvement with the Project. In some instances, these individuals had continued involvement with the Project even after leaving EPA (e.g., Wayne Nastri, William M. Riley, etc.), and these requests encompass communications with such individuals both before and after their tenure at EPA. As also noted in Attachment A, the requests also include without limitations all documents referring or relating to any communications with Senator Mark Begich, including emails, letters, calendar entries, and call lists.

While this request encompasses communications between and among a number of individuals, at this time we are willing to prioritize the production of any documents relating or referring to Phillip North, including, but without limitation, any documents retrieved from his hard drive.

For the purposes of these requests, “document” refers to any electronic, written, graphic, video, or audio matter, however produced or reproduced, whether draft or final versions, and including but not limited to correspondence, emails, notes, interoffice communications, reports, memoranda, minutes, summaries, telephone records, telephone message logs or slips, PowerPoint presentations, meeting agendas, transcripts, call lists, spreadsheets, maps, photographs, data compilations, *Vaughn* indices, privilege logs, or calendars. The term “document” is limited to materials generated between January 1, 2002 and December 31, 2007.

In responding to these requests, EPA’s search should encompass, but should not be limited to: (a) documents sent to or from email addresses used by current or former EPA employees and representatives, regardless of whether such addresses are private or secondary addresses (e.g., the email address for “Richard Windsor,” the personal/secondary email addresses of Phil North, etc.), or official EPA addresses; (b) documents generated in connection with any mining retreats which EPA participated in or conducted, including agendas, PowerPoint presentations, and notes; (c) documents relating to or evidencing presentations made by any party to agencies or entities other than EPA; (d) documents addressing the timing of EPA disclosures of information to PLP or the public; (e) documents describing non-public meetings and other communications between EPA and any non-governmental parties; and (e) documents sent to non-governmental parties opposed to development of the Project where such documents were not provided to PLP.

With respect to these requests, EPA need not provide PLP with copies of any documents that PLP itself has submitted to EPA and EPA need not provide duplicative copies of documents to the extent the same document is located in more than one location. EPA also need not include in its response the following:

1. Unredacted documents available to the public as of the date of this letter in the Bristol Bay FOIA reading room
(ftp://ftp.epa.gov/reg10ftp/bristol_bay_FOIA_reading_room);
2. Unredacted documents available to the public as of the date of this letter in Regulations.gov in the following dockets: EPA-HQ-ORD-2013-0189; EPA-HQ-ORD-2012-0276; EPA-HQ-ORD-2012-0358; or
3. Unredacted documents encompassed by PLP’s outstanding January 22, 2014 and June 13, 2014 FOIA requests submitted to the EPA.

EPA should, however, produce *in toto* any document and attachments that are only partly encompassed within categories described the foregoing portions of this paragraph. For instance, EPA should produce a responsive email and all of its attachments even if one attachment was also provided in the Bristol Bay FOIA reading room.

If any documents covered by this FOIA request have been deleted, destroyed, removed, or cannot be located, please provide all surrounding documents as well as a list of all records that have been deleted, destroyed, removed, or cannot be located, a description of actions taken in response to the unavailable documents, and any documents relevant to or generated in connection with implementing those actions.

FOIA Exemptions

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information to appeal the denial. *See* 5 U.S.C. § 552(a)(6)(A)(i), (a)(6)(F). To comply with legal requirements, the following information must be included:

1. Basic factual material about each withheld item, including the originator, addressees and recipients, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for the denial, including identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions, identify and describe the withheld portions, specify the applicable exemption, and provide the remainder of the record. *See* 5 U.S.C. § 552(a)(6)(A)(i), (a)(6)(F), (b).

Please note that the deliberative privilege will likely provide little basis to shield from production the documents requested in this letter. For instance, EPA has expressly admitted that the Assessment is not a decision document, and that it instead was prepared to provide background technical information. Assessment, EPA 910-R-14-001A-C (Jan. 2014) at 35 (“this assessment . . . is intended as a background scientific document rather than a decision document.”).

We encourage you to release any records, or portions thereof, that may technically be shielded by exemptions if there is no purpose served by withholding the requested records. *Chrysler Corp. v. Brown*, 441 U.S. 281, 294-95 (1979) (holding that FOIA exemptions are discretionary). We note that FOIA provides that an arbitrary and capricious refusal to produce responsive documents will result in investigation initiated by special counsel to determine whether disciplinary action is warranted against the individual at the agency primarily responsible for the withholding. 5 U.S.C. § 552(a)(4)(F).

Timing and Mechanics of Production

We request that in responding to this letter, EPA comply with all relevant deadlines and other obligations set forth in FOIA and EPA's regulations, and we look forward to receiving your response within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. § 2.104. Please produce records on a rolling basis; the search for – and deliberation concerning – certain documents should not delay the production of others that EPA has already retrieved and could turn over. Please note that PLP is interested in working with EPA to ensure that the burden associated with this FOIA request is minimized to the extent practicable, including discussing phased or prioritized document productions.

We prefer to receive electronic documents, and not paper copies, whenever possible. To the extent possible, we request that EPA provide the requested information in searchable, electronic format on CD, DVD, or external hard drives of sufficient size to contain the production. Electronic files should be provided in their original format, not in PDF containers. Individual emails, and their attachments, should be maintained as single msg files. If this is not possible, then emails and their attachments should be provided in either PST or NSF containers, thereby preserving all attachment information.

We understand that there may be fees and costs associated with this request, and we agree to pay any fees or costs up to \$1,000 associated with making these materials available to us. If the costs will be in excess of \$1,000, please advise me before such costs are incurred.

As noted, this letter does not seek documents that are encompassed by PLP's January 22, 2014 or June 13, 2014 FOIA requests to EPA. Accordingly, PLP's submission of the present letter is not a basis for EPA to further delay production of documents responsive to these requests.

In responding to the present letter, please mail copies of all requested documents, indices and logs, and any invoice for reasonable FOIA fees to the undersigned.

Thank you for your assistance.

Sincerely,



Patricia B. Palacios

Attachment